

Atlanta Infrastructure Ltd. Vs. Delta Marine Company & Ors.

Civil Appeal No. 2876 of 2021 arising out of S.L.P. (C) No. 14979 of 2020
2021-07-19 | SANJAY KISHAN KAUL · HEMANT GUPTA
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Full judgment text

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[Civil Appeal No. 2876 of 2021 arising out of S.L.P. (C) No. 14979 of 2020]

Sanjay Kishan Kaul, J.

1. Leave granted. Learned counsel for the respondent accepts notice.
2. Heard learned counsel for the parties.
3. The fate of a suit against encashment of bank guarantee still hangs in balance after almost two decades! It is only as a result of the push given by this court that the suit culminated in a dismissal order on 8.11.2019.
4. Respondent No.1, the original plaintiff, preferred an appeal before the learned Addl. District Judge, Khurda. On 18.11.2019, the appellate court passed an interim order restraining the release of payment of bank guarantee, which order was confirmed on 19.11.2020. On 6.1.2020, this court passed an order in SLP(C) No.6394/2017 directing disposal of the appeal within a period of three months from the next date i.e. 24.1.2020.

Meanwhile, respondent No.1 moved an application under Order 41 Rule 27 of the CPC seeking admission of copy of the report of expert opinion dated 4.12.2019 under Section 45 of the Evidence Act. They sought to place on record some documents of the appellant with an objective of signature comparison. Such a request was rejected by the learned ADJ, Khurda vide order 18.02.2020. Respondent No.1 then filed an appeal CMP 285/2020 on 12.3.2020 against the said order and in terms of order dated 16.03.2020, notice was issued and further proceedings pending before learned ADJ were stayed.

5. The aforesaid fact was brought to the notice of this court on 27.10.2020. Noticing the mockery made out of the proceedings, for stay of encashment of bank guarantee, a report was called. On 2.11.2020, the High Court vacated the stay observing that the order of this court dated 6.1.2020 was not brought to the knowledge of the High Court. In terms of the impugned judgment dated 4.11.2020, the order dated 18.2.2020 of learned ADJ was set aside and the matter was remitted back to learned ADJ to consider the application under Order 41 Rule 27 CPC afresh at the time of hearing of the appeal.

6. On conspectus of the arguments of learned counsel for the parties, we find the impugned order unsustainable. The suit had been filed for a decree of permanent injunction restraining the appellant from encashment of bank guarantee and to the bank from making payment. A further prayer was also made for a decree of declaration of the agreement dated 16.2.2001 including the arbitration clause, null and void and unenforceable.

The application under Order 41 Rule 27 CPC preferred by the respondent was predicated on a reasoning that some interrogatory had been put to the appellant which would show that a fraud was sought to be played on the Court. And that is the reason the opinion of the handwriting expert was sought for comparison of signatures on admitted documents marked as exhibits with the signatures made on the reply to the interrogatories and the vakalatnama. The report had been received only on 4.12.2019.

7. In our view, the argument of the respondent No.1 is fallacious. It is trite to say that as a bank guarantee is an independent contract, there is a limited scope for interference in case of encashment of bank guarantee as enunciated by various courts including this Court from time to time. One of the reason for interference could be egregious fraud.

The fraud must be relatable to the bank guarantee. Learned counsel for the respondent No.1 admits that what he was trying to show is that the signatures of the officers of the appellant on documents do not

match with the vakalatnama or some other documents which would in turn show that the appellants had been acting fraudulently in a different matter. However, this has nothing to do with the issue relating to the signatures of the representatives of the appellant, which they do not deny. We perceive this to be another endeavour on part of the respondent No.1 to unnecessarily keep prolonging the issue and somehow prevent encashment of the bank guarantee.

8. In view of the aforesaid, we set aside the impugned order and dismiss the appeal filed by respondent No.1 before the High Court against the order of the first appellate court rejecting their application for production of additional documents. The appeal is, accordingly, allowed leaving the parties to bear their own costs.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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